

fact as to any issue set forth in the HDO, including lack of candor and misrepresentation issues.<sup>192</sup>

B. Liberty's Asserted Lack Of Intent To Violate The Communications Act Or The Commission's Rules, Even if True, Does Not Make Its Violations "Unintentional".

Liberty argues that it acted in "good faith," assuming that its conduct was lawful, and did not specifically intend to violate any law, therefore a summary decision that its conduct was not willful is appropriate.<sup>193</sup> Even if Liberty's asserted "good faith" were consistent with the evidence (which it is not), this argument is not legally supportable. Liberty must only have intended to perform the act that results in a violation of the law in order to be found to have knowingly and intentionally violated the law in question. Congress has expressly stated that the knowing or "willful"

commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this chapter or any rule or regulation of the Commission authorized by this chapter or by a treaty ratified by the United States.<sup>194</sup>

Furthermore, Congress has explained that "willful means that the licensee knew he was doing the act in question, regardless of whether there was an intent to violate the law."<sup>195</sup>

The Commission has closely adhered to Congress' definition, and has repeatedly held that the willful violation of Commission regulations does not mean that the licensee intended

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<sup>192</sup>See Itawaba County Broadcasting Co., Inc., 54 FCC 2d 537 (1975) (holding that applicant had failed to carry burden of showing it had not lacked candor before the Commission).

<sup>193</sup>E.g., Jt. Mot. at ¶¶ 81, 102, 104-05.

<sup>194</sup>47 U.S.C. § 312(f)(1) (emphasis added).

<sup>195</sup>H.R. Rep. No. 97-765, 97th Cong., 2d Sess. 51 (1982) (emphasis added).

to violate the law, but rather, that he knew he was doing the act that resulted in such violation.<sup>196</sup> Thus, the record does not have to show that Liberty intended to violate the Commission's regulations; rather, it need only show that Liberty intended to do the acts that resulted in violation of the Commission's regulations.<sup>197</sup>

The determination of a party's intent is a question of fact that can be inferred from other facts in the record.<sup>198</sup> In the present case, Liberty does not dispute that it provided OFS microwave service to 19 buildings prior to receiving licenses from the Commission for the provision of such service,<sup>199</sup> that it has served by hardwire interconnection 13 pairs of buildings,<sup>200</sup> and that it never revealed any of these facts until, in the case of the hardwire interconnections, it was the object of legal action by state and local authorities and, in the case of its unlicensed operations, TWCNYC brought these illegal operations to the

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<sup>196</sup>See Paging Network of Los Angeles, Inc., 10 FCC Rcd 12213, ¶ 9 (1995) ("PageNet") (violations were willful "because they were the result of Respondents' conscious and deliberate actions, irrespective of any intent to violate [the] Commission's Rules"); Esaw Industries, Inc., 9 FCC Rcd 2693, ¶ 4 (1994) ("willful nature of a violation is established by a showing that the actions resulting in the violation were intended; not on a showing that there was any specific intent to violate the law"); Capitol Radiotelephone Inc., 8 FCC Rcd 6300, ¶ 11 (1993); Virginia RSA 6 Cellular Limited Partnership, 7 FCC Rcd 8022, ¶ 4 (1992); Benito Rish, 7 FCC Rcd 6036, ¶ 7 (1992) ("deliberate intent to violate the law or to evade detection is not an essential element of the violations"); Southern California Broadcasting Co., 6 FCC Rcd 4387, ¶ 5 (1991); MCI Telecommunications Corp., 3 FCC Rcd 509, n.22 (1988) (subsequent history omitted).

<sup>197</sup>See, e.g., Capitol Radiotelephone Inc., 11 FCC Rcd 2335, ¶ 13 (1996).

<sup>198</sup>See, e.g., California Public Broadcasting Forum v. FCC, 752 F.2d 670, 679 (D.C. Cir. 1985); Black Television Workshop of Los Angeles, Inc., 8 FCC Rcd 4192, n.41 (1993).

<sup>199</sup>Jt. Mot. at ¶ 90.

<sup>200</sup>Id. at ¶ 78.

Commission's attention. This lack of forth rightness itself has been cited by the Commission in decisions to deny or not to renew other licenses.<sup>201</sup>

Liberty has also argued that its unauthorized activation of 19 microwave paths was "inadvertent and not willful" and should, therefore, not serve to disqualify it from becoming a licensee.<sup>202</sup> Liberty has further asserted that it should not be penalized for its own lack of internal control and absence of management with regard to the licensing process.<sup>203</sup> The Commission, however, has held that unintended, or truly accidental, violations of Commission regulations are those "resulting from an unintended action which resulted in the violation."<sup>204</sup> Moreover, violations that result from a licensee's lax operations of its facilities, and that could easily have been avoided, are not inadvertent violations.<sup>205</sup> Rather, such violations are willful because they are the result of the licensee's knowing and deliberate actions, regardless of the licensee's intent to violate Commission regulations.<sup>206</sup>

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<sup>201</sup>See, e.g., RKO General, Inc. (WNAC-TV), 78 FCC 2d 1, 112 (1980) and Character Policy Statement, 102 FCC 7d 1179, 1210 (1986): The Commission's "scheme or regulation rests on the assumption that the applicants will supply the Commission with accurate information." The "trait of truthfulness" is one of the two key elements of character necessary to hold an FCC license in the public interest. The other is reliability in complying with the Communications Act and the Commission's requirements. Id. at 1209-1210. Intentional deceptions of the Commission by providing either false information (misrepresentation) or incomplete and misleading information (lack of candor) are viewed as "serious breaches of trust." Id. at 1211.

<sup>202</sup>Id. at ¶ 102.

<sup>203</sup>Id. at ¶¶ 92, 102.

<sup>204</sup>Esaw Industries, 9 FCC Rcd 2693, ¶ 4 (emphasis added).

<sup>205</sup>See, e.g., PageNet, 10 FCC Rcd 12213, ¶ 9.

<sup>206</sup>Id.

Finally, Liberty contends that the asserted fact that its management did not know about or participate in the illegal activation of 19 microwave paths is a mitigating factor precluding disqualification of Liberty as a licensee.<sup>207</sup> In support of this proposition, Liberty cites David A. Bayer,<sup>208</sup> a case that is readily distinguishable from the present case. In Bayer, CyberTel, a cellular licensee, committed minor technical violations such as operating with improperly installed antennas and operating at excessive power levels. CyberTel admitted each alleged violation, and "indicate[d] that they were due to mistakes by independent contractors and CyberTel staff, but were not part of an intentional plan to expand coverage."<sup>209</sup> The Commission determined that, "[f]or inadvertent technical violations of the type involved here," CyberTel's qualifications to be a licensee were not called into question, and that a forfeiture, rather than revocation, was the appropriate sanction.<sup>210</sup> In contrast, the violations committed by Liberty in the present case are far more egregious than "inadvertent technical violations," such as installing the wrong antenna and using incorrect power settings on cell site transmitters. Rather, they are blatant violations of the most basic of Commission rules -- knowing activation and continued operation of unlicensed microwave facilities.<sup>211</sup>

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<sup>207</sup>E.g., Jt. Mot. at ¶¶ 103, 105. Of course, this argument is itself deceptive, because Liberty's management knew that the Company was providing service to each of these locations.

<sup>208</sup>Bayer, 7 FCC Rcd 5054 (1992).

<sup>209</sup>Id. at ¶ 7.

<sup>210</sup>Id.

<sup>211</sup>See, e.g., Mebane Home Tel. Co., 51 RR 2d 926 (1982).

Moreover, even if Liberty's management had not known about or participated in the illegal activation of unlicensed microwave paths, this fact does not exculpate Liberty. It is well established that Commission licensees are responsible for the actions of employees charged with the supervision of day-to-day operations of the licensee's station or system.<sup>212</sup> Specifically, a licensee that "delegates authority to supervise station operations must be held responsible for any failure in supervision and control under the concept of *respondeat superior*."<sup>213</sup> The Commission has further held that

[t]he fact that the misconduct was attributable to an employee is not relevant. A licensee is fully responsible under the doctrine of *respondeat superior*, whether or not violations were intentional or inadvertent.<sup>214</sup>

Application of the doctrine of *respondeat superior* is consistent with the Commission's policy statement on character qualifications of licensees, in which the Commission stated that

[a] corporation must be responsible for the FCC-related misconduct occasioned by the actions of its employees in the course of their . . . employment. To hold otherwise would, inter alia, encourage corporate owners to improperly delegate authority over station operations in order to 'neutralize' any future misconduct.<sup>215</sup>

The Commission's Character Policy Statement also acknowledges that there can be mitigating factors that can act to temper a licensee's misconduct, but such factors "must be considered

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<sup>212</sup>See EZ Communications, Inc., 86 FCC 2d 116 (1981).

<sup>213</sup>Id.

<sup>214</sup>Dial-A-Page, Inc., 8 FCC Rcd 2767, ¶ 9 (1993) (citing David A. Bayer, 7 FCC Rcd 5054).

<sup>215</sup>Policy Regarding Character Qualifications in Broadcast Licensing, 102 FCC 2d 1179, ¶ 78 (1986) ("Character Policy Statement").

on a case-by-case basis."<sup>216</sup> One factor generally considered is whether the owners or managers were actually involved in the conduct that violated the Rules.<sup>217</sup> In the Bayer case, the record indicated that CyberTel's owners and managers were not involved in the misconduct and did not know of its occurrence until some time after it occurred.<sup>218</sup>

Conversely, in the present case, the record indicates that Liberty's president and at least two of its owners knew that Liberty had activated each of the paths identified in Appendix A to the HDO; and, in February 1995, Liberty's president was advised in a written memorandum that a substantial number of those paths were unlicensed.<sup>219</sup>

In his position as Director of Engineering, Mr. Nourain personally supervised the activation of all of the microwave paths that were activated without a license. In this capacity, Mr. Nourain was entrusted with the job of overseeing the coordination and activation of Liberty's various microwave paths.<sup>220</sup> Mr. Nourain's knowledge of the

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<sup>216</sup>Id.

<sup>217</sup>See Character Policy Statement, 102 FCC 2d at 1218; Bayer, 7 FCC Rcd 5056, ¶ 15.

<sup>218</sup>Bayer, 7 FCC Rcd 5056, ¶ 15.

<sup>219</sup>Bayer is further distinguishable because CyberTel received no benefit from its inadvertent violations of the Commission's rules. Id. Conversely, the violations committed by Liberty resulted in substantial benefit to Liberty. By operating numerous microwave pathways prior to obtaining licenses, Liberty was able to acquire a substantial number of subscribers and receive revenue from those subscribers prior to having Commission authority to do so. Even upon "discovery" of its illegal operations, Liberty did not cease to provide service over the paths for which it did not have licenses; it simply did not continue to activate new paths without first obtaining licenses. Jt. Mot. at ¶ 36. Thus, Liberty benefitted from its violations of Commission rules, while the respondent in the Bayer case did not.

<sup>220</sup>Jt. Mot. at ¶ 92.

operational status of these microwave paths is imputed to Liberty, a corporate licensee.<sup>221</sup>

Each individual within a corporate entity is simply not required to have knowledge of all the actions taken by various other employees within the corporation in order for the corporation to have knowledge of, and be responsible for, such actions.<sup>222</sup> Moreover, like Mr. Price, Mr. Nourain was advised in late February 1995 that Liberty did not have licenses for most of the addresses listed on Appendix A to the HDO.

C. The Joint Motion's Claim That Liberty Had No Intent To Deceive The Commission Is Based On An Incorrect Legal Standard.

The Joint Motion claims an absence of facts showing any intent to deceive on Liberty's part, and, therefore, that Liberty did not engage in misrepresentation or lack candor toward the Commission.<sup>223</sup> However, this argument is legally incorrect.

The two Commission Rules relevant to this proceeding that forbid dishonest conduct are Rules 1.17 and 1.65.

Rule 1.17 states, in relevant part:

No applicant, permittee or licensee shall in any response to Commission correspondence or inquiry or in any application, pleading, report or any other written statement submitted to the Commission, make any misrepresentation or

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<sup>221</sup>See, e.g., National R.R. Passenger Corp., 677 F. Supp. 1, 6 (D.D.C. 1987) ("[u]nder principles of agency law, a principal is charged with knowledge of facts known to his agent which the agent had a responsibility to bring to the attention of the principal"); SEC v. Wall Street Publishing Institute, Inc., 591 F. Supp. 1070, 1084-85 (D.D.C. 1984) (any knowledge held by corporate employee may be imputed to corporation on agency principles, and corporation is "clearly responsible for the corporate knowledge and acts of [such employee]"); see also Bowen v. Mt. Vernon Sav. Bank, 105 F.2d 796, 799 (D.C. Cir. 1939) (rule seeks to prevent "the injustice of allowing the principal to avoid, by acting vicariously, burdens to which he would become subject if he were acting for himself").

<sup>222</sup>See SEC v. Wall Street, 591 F. Supp. at 1084-85.

<sup>223</sup>Jt. Mot. at ¶¶ 113-14.

willful material omission bearing on any matter within the jurisdiction of the Commission.<sup>224</sup>

Similarly, Rule 1.65 states:

- (a) Each applicant is responsible for the continuing accuracy and completeness of information furnished in a pending application or in Commission proceedings involving a pending application.<sup>225</sup>

The Commission also forbids, generally, misrepresentations or lack of candor of any kind. As the Commission has stated:

Misrepresentations and lack of candor can indeed be distinguished in their manifestations: the former involves false statements of fact, while the latter involves concealment, evasion, and other failures to be fully informative. But both misrepresentation and lack of candor represent deceit; they differ only in form.<sup>226</sup>

The Commission has recognized that:

In view of the fundamental importance of licensee truthfulness, the fact of a concealment or misstatement may have more significance than the actual fact concealed, FCC v. WOKO, 329 U.S. 223, 227 (1946), and we have explicitly refused to renounce our authority to consider even the most insignificant misrepresentation as disqualifying.<sup>227</sup>

Stated otherwise, the Commission views an applicant's misrepresentation and lack of candor as a serious breach of trust.<sup>228</sup> An applicant has a duty "to be forthcoming as to all facts and information relevant to a matter before the FCC, whether or not such information

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<sup>224</sup>47 C.F.R. § 1.17 (emphasis added).

<sup>225</sup>47 C.F.R. § 1.65.

<sup>226</sup>KQED, Inc., 1988 FCC LEXIS 2646, \*34 (Rev. Bd. 1988), aff'd, 5 FCC Rcd 1784 (1990).

<sup>227</sup>San Joaquin Television Improvement Corp., 2 FCC Rcd 7004, 7005 (1987).

<sup>228</sup>Swan Creek Communications v. FCC, 39 F.3d 1217, 1221-22 (D.C. Cir. 1994).



is particularly elicited."<sup>229</sup> "[T]ruthfulness and full candor are as much expected in discovery as they are with respect to submissions to the Commission itself."<sup>230</sup> Accordingly, the Commission "is not expected to play procedural games with those who come before it in order to ascertain the truth."<sup>231</sup>

Although the Joint Motion argues correctly that intent to deceive is an essential element of both misrepresentation and lack of candor,<sup>232</sup> it is incorrect in its suggestion that, absent conduct that is tantamount to an admission, no other evidence is sufficient to justify a trial.<sup>233</sup> Intent or state of mind can be found from evidence affording a reasonable inference.<sup>234</sup> For instance, intent can be found from a misstatement coupled with a motive to lie,<sup>235</sup> or with evidence demonstrating knowledge of the misstatement's falsity.<sup>236</sup>

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<sup>229</sup>Swan Creek, 39 F.3d at 1222, (quoting Silver Star Communications, -- Albany, Inc., 3 FCC Rcd 6342, 6349 (Rev. Bd. 1988)).

<sup>230</sup>Kate F. Thomas, 8 FCC Rcd 7630 (Rev. Bd., 1993) (quoting Edwin A. Bernstein, 6 FCC Rcd 6841, 6844 n.6 (1991)).

<sup>231</sup>Garden State Broadcasting v. FCC, 996 F.2d 386, 393 (D.C. Cir. 1993) (quoting RKO General, Inc. v. FCC, 670 F.2d 215, 229 (D.C. Cir. 1981), cert. denied, 457 U.S. 1119 (1982), 469 U.S. 1017 (1984)).

<sup>232</sup>Weyburn Broadcasting, 984 F.2d 1220, 1232 (D.C. Cir. 1993).

<sup>233</sup>Jt. Mot. at ¶¶ 112-117.

<sup>234</sup>California Public Broadcasting Forum v. FCC, 752 F.2d 670, 679 (D.C. Cir. 1985).

<sup>235</sup>Joseph Bahr, 10 FCC Rcd 32, ¶ 6 (1994).

<sup>236</sup>David Oritz Radio Corp. v. FCC, 941 F.2d 1253, 1260 (D.C. Cir. 1991).

There is ample evidence in the record of Liberty's misstatements and of Liberty's knowledge of their falsity. Moreover, the record also provides substantial evidence of Liberty's motive to conceal its violations from the Commission.

D. Disqualification Is An Appropriate Sanction For Liberty's Misrepresentations To The Commission And Violation Of The Commission's Rules.<sup>237</sup>

Liberty asserts that a lesser sanction than disqualification would be appropriate based on the facts in the present case.<sup>238</sup> This assertion overlooks key factual differences between this case and other cases where forfeitures were imposed in place of disqualification or revocation, and also disregards the Commission's authority to disqualify an applicant for even the slightest misrepresentation to the Commission.

In the cases cited by Liberty where the Commission determined that a forfeiture was an appropriate sanction, such decision was reached after a hearing had been held, and the ALJ had considered all the relevant evidence.<sup>239</sup> In the present case, not only has a hearing not yet been held, but the expedited discovery has resulted in an incomplete record

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<sup>237</sup>TWCNYC and Cablevision address the appropriateness of the sanction suggested by the Joint Motion only because the Joint Motion includes such a discussion. the issue of the sanction is not properly before the Presiding Judge until there is a ruling on the matter that is before the Presiding Judge -- whether summary decision should be granted. As it is, this discussion is limited to the question of whether disqualification is an appropriate sanction. TWCNYC does not accept the implicit premise of the Joint Motion that disqualification and forfeiture are mutually exclusive sanctions. Following the conclusion of the hearing or the Presiding Judge's grant of summary decision, as the case may be, TWCNYC and Cablevision would respectfully request the opportunity to fully brief the sanction's question. Among the matters raised -- not discussed here -- is the relationship between the amount of the forfeiture proposed by the Joint Motion and the amount of financial gain realized by Liberty as a result of its illegal activities.

<sup>238</sup>Jt. Mot. at ¶ 107.

<sup>239</sup>E.g., Oil Shale Broadcasting Co., 68 FCC 2d 517 (1978); Abacus Broadcasting Corp., 7 FCC Rcd 6004 (1992).

that contains numerous disputed material facts, and from which a determination of whether only a forfeiture is an appropriate remedy for Liberty's numerous and egregious violations cannot yet be made.

Furthermore, the violations that were the subject of the hearings in Oil Shale (pre-arranging the outcome of a broadcast contest, and making misrepresentations to the Commission with regard thereto) and Abacus (making misrepresentations to the Commission regarding coverage area of service) were far less severe than Liberty's illegal operation of microwave paths and operation of a cable system without a franchise, coupled with misrepresentations to the Commission regarding such operations. The Commission has held that "[t]he unlicensed operation of a radio transmitter is one of the most serious violations under the Communications Act."<sup>240</sup> The fact that Liberty made misrepresentations to the Commission regarding such illegal operations compounds the severity of the violations. The Commission has stated that it can "treat even the most insignificant misrepresentation as disqualifying."<sup>241</sup> Thus, this case is not necessarily appropriate for a forfeiture alone, as Liberty contends.

Liberty also relies on MCI Telecommunications Corp.,<sup>242</sup> claiming that it "provides dispositive authority for imposing forfeiture rather than disqualification in this case."<sup>243</sup> In

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<sup>240</sup>Robert J. Hartman, 9 FCC Rcd 2057 (1994) (citing Mebane Home Tel. Co., 51 RR 2d 926 (1982)).

<sup>241</sup>Abacus, 7 FCC Rcd 6004, 6009 (citing Character Policy Statement, 102 FCC 2d 1179, 1210), aff'd 8 FCC Rcd 5110 (1993).

<sup>242</sup>MCI Telecommunications Corp., 3 FCC Rcd 509 (1988), as supplemented, 4 FCC Rcd 7299 (1988),

<sup>243</sup>Jt. Mot. at ¶ 108.

MCI, the Commission found revocation to be an inappropriate sanction, and instead ordered a forfeiture for MCI's violations of various Commission regulations pertaining to the construction and operation of point-to-point microwave facilities. While Liberty describes the violations in MCI as "numerous instances of premature construction and unauthorized operation of point-to-point microwave radio service,"<sup>244</sup> the Commission described MCI's violations<sup>245</sup> as "isolated violations."<sup>246</sup> The Commission also found no evidence of misrepresentation or lack of candor on the part of MCI, nor any intent to violate the Commission's rules.<sup>247</sup> While the Commission did not condone MCI's violations, it did not find that such isolated actions justified revocation.<sup>248</sup>

In the present case, Liberty's violations are not a dozen isolated violations out of 1700 authorizations. Rather, Liberty has committed one of the most serious violations of all -- operating without Commission authority to do so -- and has done so at least 19 times without even informing the Commission of its operations until such operations were disclosed by TWCNYC. While it is within the Commission's discretion to order a forfeiture rather than

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<sup>244</sup>Id.

<sup>245</sup>The Commission noted that MCI had over 1700 microwave authorizations, and, based on the evidence before it, concluded that MCI's violations consisted only of premature construction on *four* routes, unauthorized operation on *two* routes, filing an application to cover a permit that had expired three days previously, failing to disclose unresolved frequency coordination disputes on two occasions, and incorrectly checking the wrong box regarding use of federal land on four occasions. MCI, 3 FCC Rcd 509, n.19.

<sup>246</sup>MCI, 3 FCC Rcd 509, ¶ 48.

<sup>247</sup>Id.

<sup>248</sup>Id.

disqualify Liberty from obtaining licenses for these microwave facilities,<sup>249</sup> the MCI case certainly does not support Liberty's argument. The nature of the violations here are far more serious and, in both absolute and relative terms, more numerous than those in MCI.

Moreover, discovery in this case has uncovered an additional violation by Liberty -- that its director of engineering, Behrooz Nourain, signed application and STA requests in blank. The Joint Motion attempts to use this fact to exculpate Liberty, rather than acknowledge it for what it is -- an additional and repeated violation of the Commission's Rules by Liberty. The Joint Motion alleges:

Nourain even signed license applications in blank and sent them to Pepper & Corazzini. As a result, Nourain had no participation in the license application process after the frequency was coordinated.<sup>250</sup>

Not only do the facts show that Nourain was intimately involved throughout the licensing process, but the Joint Motion ignores the fact that Nourain committed egregious violations of the Commission's rules even if he did sign applications in blank.

An applicant cannot escape responsibility for the contents of a license application on the basis that the applicant or its representative failed to read the application. Indeed, in signing the application, the applicant certifies that the statements in the application are "true, complete, and correct to the best of [his] knowledge and belief, and are made in good faith."<sup>251</sup> Signing a blank application constitutes an improper certification,<sup>252</sup> and a

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<sup>249</sup>See 47 U.S.C. § 312(b); C.J. Community Services, Inc. v. FCC, 246 F.2d 660, 664 (D.C. Cir. 1957) ("When a violation of the Act has been shown, the Commission may revoke a station license, but under § 312(b), it also may impose a lesser sanction.") (emphasis added).

<sup>250</sup>Jt. Mot. at ¶ 29.

<sup>251</sup>RKO General, Inc., 2 FCC Rcd 2839, 2853 (1987) (emphasis added).

misrepresentation.<sup>253</sup> As noted above, any misrepresentation to the Commission is a serious matter,<sup>254</sup> and knowingly making a material false statement on an FCC application, as the form itself advises, is a criminal offense, punishable by imprisonment and fine.<sup>255</sup> It is therefore highly improper to glaze over the implications of this fact, much less use it as an excuse for operating unlicensed microwave paths. The Joint Motion does not take into account the criminal liability implications of Mr. Nourain's deliberate signing of applications in blank. There is no claim that Mr. Nourain did this without his employer's authority. Therefore, such a misrepresentation must be considered when deciding whether Liberty should be disqualified from holding FCC licenses.<sup>256</sup>

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<sup>252</sup>(...continued)

<sup>252</sup>Broadcast Associates of Colorado, 100 FCC 2d 2839, ¶¶ 172-73 (1985).

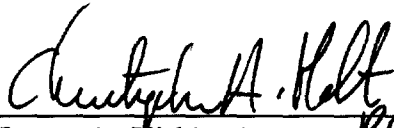
<sup>253</sup>Salinas Broadcasting, 4 FCC Rcd at 2770.

<sup>254</sup>See San Joaquin Television Improvement Corp., 2 FCC Rcd at 7005.

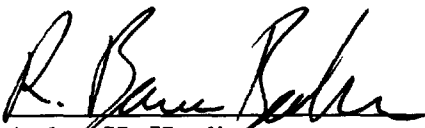
**V. CONCLUSION**

For the foregoing reasons, TWCNYC and Cablevision urge the Presiding Judge to deny the Joint Motion for Summary Decision, grant the requested additional discovery, and set this proceeding for a hearing after the Internal Audit Report is made available to all of the parties and the Presiding Judge.

Respectfully submitted,

  
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**CERTIFICATE OF SERVICE**

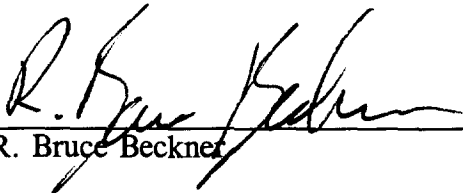
I, R. Bruce Beckner, hereby certify that a copy of the foregoing Combined Opposition to Joint Motion for Summary Decision was served, via UPS or hand delivery, this 13th day of September, 1996 upon the following:

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